

~~Mr. William Hildreth and Bruce McDonald, Esq. came before the Board representing this proposal.~~

Mr. VanLeeuwen: This is a problem we have had in front of us before.

Mr. Hildreth: This was last before the Planning Board on 10 May.

Mr. Pagano: Are you familiar with the engineer's comments?

Mr. Hildreth: No, I am not.

Mr. VanLeeuwen: I have a statement I'd like to make regarding this. When this project was originally approved, we all got together and we said there will be no more four lots or four houses on a private road. Personally, I do not change my mind. It was a well discussed item. We discussed it at many meetings and now we are winding up with, I believe, five on a private road, am I right?

Mr. Hildreth: By way of a little bit of review and introduction if I may, with me tonight is the applicant, Mr. Larkin and his attorney, Bruce McDonald. Skipping backwards just for a moment, there were a couple items I had taken care of, engineering comments, and the bottom line is other than the discussions we are going to have about the lot count, everything conforms to the bulk in the zone. I just want to point that out.

Mr. Soukup: I have a problem and that is about the new county law on septic systems. This map is not fileable.

Mr. Hildreth: I am aware of that.

Mr. Soukup: There is no way the Board can approve it.

Mr. Hildreth: I am aware there has been a perc test taken.

Mr. Soukup: Note about septic system will be designed by is no good anymore.

Mr. Hildreth: I understand. There is a time lag between the time the plans are submitted. There has been a perc test done. There is sufficient room for sanitary system. The design can be done and will be done if we get past this particular item.

Mr. VanLeeuwen: When we gave approval for the last subdivision there, I believe it was up in here, I think I said at that time that I would not further go along with another subdivision in this.

Mr. Hildreth: Are you talking about the lot line change?

Mr. VanLeeuwen: Yes. I understand at that time what you were planning to do and I am still in favor of our rule, four homes on

a private road.

Mr. Hildreth: As I understand it, that is the point that the attorney is going to make tonight. To assist everyone in seeing what is going on, I have brought along a copy of the previously approved subdivision and they are two different scales so if you can just take a minute to show you what is going on. There are two private roads now. We are dealing with a subdivision of lot 4 as revised by a lot line change. There was a lot line change by these two lots.

Mr. VanLeeuwen: That is correct, I remember that.

Mr. Hildreth: Which takes this line and makes a lot like that. Now, he wants to subdivide this. Access is to be off of this one here which is Piper.

Mr. VanLeeuwen: How many lots on Piper?

Mr. Hildreth: That one makes this 1, 2, 3, this was a lot under the old subdivision that was not considered a building lot at the time. It has subsequently been sold to an adjoining owner by the name of Miller. We have deeds of conveyance that excludes specifically any rights of ingress and egress over this private road.

Mr. VanLeeuwen: He has got rights on Toleman Road.

Mr. Hildreth: The conveyance of this piece excludes specifically.

Mr. Soukup: Prohibits or excludes?

Mr. Hildreth: Both, I am not a lawyer. He can't use it, he doesn't make, doesn't allow it. Based on the wording of the town law defining private roads as I understand it, it is driveways so there would be a driveway for this lot. There is an existing lot for this lot, I am not aware if this one is developed now or not and there would be a driveway for this lot so you'd have 1, 2, one coming in here, one here and one here.

Mr. Rones: If you have more than one driveway that makes it a private road.

Mr. Hildreth: You'd have another one, this is existing right here, you'd have 1, 2, and 3. I know there is one here but that would be four. There will never be any driveway for this lot.

Mr. Schiefer: Where does that lot--there will never be a driveway which will have access?

Mr. VanLeeuwen: The guy in the front bought the lot.

Mr. Hildreth: Miller owned a lot here and here so Miller now has three tax parcels that are all contiguous.

Mr. Schiefer: That still leaves that one lot without any access even though it is the same, this lot has no access.

Mr. Hildreth: It has no access over Piper Drive.

Mr. Schiefer: Until there is a lot line change, there is no access to that lot.

Mr. Hildreth: I don't follow you.

Mr. VanLeeuwen: He is going to create access off Toleman Road.

Mr. Schiefer: Right now, there is none.

Mr. Hildreth: Because it is a separate tax lot.

Mr. Schiefer: That is right.

Mr. VanLeeuwen: He will come in with a road too, eventually, more than likely, not that I have anything against private roads, I don't.

Mr. McDonald: That is exactly the point we are trying to distinguish. This talks about the fact that is fully utilized under the local law, the local law goes to the point of the driveway. I have provided the deed of the lot that goes to issue and it addresses your idea that it is not just not allowed. When the subdivision was initially divided, that was a piece of land that was by way of engineering, it wasn't useable. And so Mr. Miller, the gentleman that owns the parcel that borders Toleman purchased it as a buffer zone. This is where the language came in that always would deny forever the right of ingress or egress to Piper so it doesn't seem to frustrate the law if inasmuch as it can never be used so it should be counted. I know Mark was instrumental in drafting the law and he is now on vacation. I spoke with Mr. Ronces about this application briefly about a week ago and I think hopefully this will just layout the standards we are using, trying to apply the facts to the law.

Mr. Pagano: There is no way to enforce it. You can put anything you want. You are not going to be able to enforce it. If a guy wants to put his driveway, he is going to put it in.

Mr. McDonald: You are, as a Planning Board, you wouldn't allow it.

Mr. VanLeeuwen: Did you read the engineer's comments?

Mr. McDonald: Exactly. Mark is, made a legal determination about a law that he drafted without the knowledge of the lot that the lot is legally precluded.

Mr. Soukup: That is not quite true. The lot has given up its right of access according to the deed. However, it is a separate lot in the tax map, it can be sold to a third party, okay, and that third party is not Mr. Miller but some distant party and he goes to the

Zoning Board of Appeals for a variance of access on a party road. He could get a hardship variance because he doesn't own the front lot. Miller does so that, even though this is the intent and it may be current, there is a possibility that the variance board, Zoning Board of Appeals might be backed into granting a future access due to hardship. The only way that can be foreclosed is to have the back lot combined in a single deed and only one lot number put on Miller's property. Then, it would have to come back to us prior to subdivision.

Mr. VanLeeuwen: That is the only way I would approve it, got to be single filed deed or I will not go along with it.

Mr. Soukup: You still have two lots that could, through a variance proceeding get access.

Mr. McDonald: I understand your logic. I think there are two points. Number one, you are talking about a restrictive covenant that runs with the land at the time that you--

Mr. Soukup: Not by the Planning Board.

Mr. McDonald: For the purposes of our discussion now for this application, should there be a granting of the subdivision, the fourth driveway would be there then you have a moot issue.

Mr. Soukup: Planning Board cannot enforce the deed. If they don't wish to, we don't want a--

Mr. McDonald: What I'm saying is that they, there is a restrictive covenant that runs with the land. At the time that a fourth driveway is allowed, you are talking about driveways that are distinguishable from talking about tax maps. What I'm trying to do is distinguish the--that talks to driveways and right now the way that lot sits and I assume that the overall purpose here is to go in an orderly development of land, we can preclude certain things in the future and not--

Mr. VanLeeuwen: That is not satisfactory to me. The only thing that would be satisfactory to me, you took the words out of my mouth, I said it at the last Planning Board meeting that if that is one tax map designation and total parcel, what Miller owns, then I will go for it. Otherwise, I will not.

Mr. Soukup: At least the front and back parcel.

Mr. VanLeeuwen: They can come back and say I bought this piece of land thinking I am on the road now I can't have access. That is not--

Mr. McDonald: : The intent of the law seems to be that you are talking about driveways, not about tax map designations.

Mr. VanLeeuwen: You are an attorney, don't twist it around.

Mr. McDonald: I am not trying to twist it.

Mr. Rones: The private road is defined as one having access for more than one driveway up to four driveways but a little later on in the private road specifications, it states that in order to create in excess of four lots on an existing private road, the private road first has to be brought up to current applicable street specifications and dedicated to the town.

Mr. McDonald: Is there a driveway? I would just offer that right now. To back up at the beginning of the application and discussing the statute, there is not a driveway there right now.

Mr. Rones: The portion of that has to do with the definition of private road that if you have between one and four driveways but farther down in the discussion in the statute or the ordinance rather it states that to have more than four lots on an existing private road, it first has to be dedicated to the town.

Mr. McDonald: And lots are defined by way of driveways, is that correct?

Mr. Rones: No, lots are not defined by way of driveways.

Mr. VanLeeuwen: I hate to belabor this. We have a lot to do. I make a motion to approve it.

Mr. Pagano: I will second it.

Mr. Schiefer: I know what is going to happen here.

Mr. VanLeeuwen: We have no choice. I stated at the last meeting if he is willing to combine that piece of land into one, fine.

Mr. Schiefer: Now, what is going to happen on the vote. Do you want to make an agreement to combine that lot before we vote.

Mr. Hildreth: I have no control.

Mr. Schiefer: Otherwise--

Mr. McDonald: Can we do one thing and I don't want to belabor, can we possibly have memos submitted to Mr. Rones, get some input from Mark by way of this and leave it at that.

Mr. Matscherz: You have the input from Mark, the basis of this.

Mr. Rones: Mark has been aware because we have discussed this a number of times at these meetings before.

Mr. VanLeeuwen: What he said tonight, isn't that what I said, Miller has got to agree to that, to take that into one tax parcel, otherwise we are going to get locked in. When you first came in for the lot line change, I said I have no objection but if you are going to add another lot, the other lot down below should be combined into one lot and I'm not going to budge.

Mr. Rones: And the restriction against access has been discussed. We have been aware of it and Mark has been aware of it.

Mr. Schiefer: I hear you saying here asking for an illegal situation here.

Mr. Rones: The interpretation of the street specifications is up to the Planning Board but I believe you have already expressed your opinion. I am pointing out to you merely that the expressions that I have heard from the Planning Board members finds support in the street specifications in that section 9C4, it states that in order the create in excess of four lots on an existing private road, said private road shall have first been improved to the current applicable street specifications dedicated to and accepted by the Town of New Windsor etc.

Mr. VanLeeuwen: If he can induce Miller to accept it as one tax lot, his piece of property, I have no problem with it.

Mr. Soukup: I will call a vote.

Mr. McDonald: Can we move to adjourn until I can further discuss this with counsel. We'd like to get in touch with Mr. Miller. I don't want to shoot it dead, clearly, and I don't mean to be disputing Mr. Rones' position, I still don't see from reading the statute, how the Planning Board comes out with the idea of what is going to be a lot on a private road. I am just looking at the driveways and it appears to me it says that those are going to be counted.

Mr. Soukup: You are offering a deed restriction. The Planning Board is not a party to that deed restriction. We cannot enforce it. Therefore, we don't have the faith in it that you do.

Mr. Schiefer: I have gotten Mr. Rones' interpretation. I am going to go for a vote. The only way that I can see changing it is the way Mr. VanLeeuwen suggested, combine those two into a single lot.

Mr. Rones: As I understand it, the applicant would like to table consideration until he has a chance to discuss with his client a possible revision of the subdivision, am I right?

Mr. McDonald: I don't know if we are going to physically revise, we don't want to see it shot down.

Mr. Rones: As long as you waive the applicable time periods for consideration on behalf of your client and unless the Board has some objection.

Mr. Schiefer: I have a motion made and seconded. I have a call for a vote and now the applicant is asking for recess of this entire matter. Are you people willing to withdraw that and let him see what they can do about this or go ahead with the vote?

Mr. VanLeeuwen: I have to withdraw the motion. I move to table this.

Mr. Pagano: I will second it.

Mr. Rones: Before you take the vote, does the applicant waive the applicable time period for approval of subdivision?

Mr. McDonald: Yes.

ROLL CALL:

Mr. Pagano	Aye
Mr. VanLeeuwen	Aye
Mr. Soukup	Aye
Mr. Schiefer	Aye